

TESTIMONY of Dr. GLENN ADLER

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**Before the Committee on Government Reform Subcommittee on National Security,
Emerging Threats, and International Relations**

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Mr. Chairman, Ranking Member Kucinich, and members of the Subcommittee, thank you for the opportunity to testify before you today. My name is Glenn Adler, and I am a research analyst in the Property Services Division of the Service Employees International Union (SEIU).

We welcome this opportunity to testify before your committee, and appreciate Chairman Shays' leadership on this issue and for recognizing the value of talking with organized labor on a matter where security officers' workplace conditions, contractors' performance, DOE oversight, and national security intersect.

THE SERVICE EMPLOYEES INTERNATIONAL UNION

SEIU is one of the largest trade unions in the United States, with more than 1.8 million members. More than 50,000 private security officers and public safety personnel are members of SEIU. More than 30,000 of these members work in the public sector as security officers, sworn law enforcement officers, and support personnel. SEIU's law enforcement membership includes the 9,500 police officers in the International Brotherhood of Police Officers.

In support of our work in this sector I have been responsible for developing improved policies and standards for private security, and for coordinating our research and policy work in the federal sector, including in DOE nuclear facilities and NRC-regulated commercial nuclear power plants.

As America's largest security officers' union, SEIU has initiated the only nationwide effort to date to raise standards in the private security industry. We understand deeply the urgency of this task. On 9/11 security officers, janitors, and other building service personnel who are members of our Local 32BJ worked side-by-side at the World Trade Center in New York. Working with the NYPD, FDNY and other emergency workers, they were among the "first responders" to that terrible tragedy, a cause to which many of our members gave their lives. But well before the horrible events of 9/11 SEIU had begun raising the issue of security standards, most notably for airport security screeners.

State laws vary greatly with respect to private security standards and enforcement. Thirty-one states require no training for officers whatsoever. In twenty-one states, private security workers do not have to be licensed. Criminal background checks are not required in sixteen states.

SEIU has also worked closely with governors and state legislators – most prominently in Illinois, California, and New York - to pass legislation to toughen training standards and create greater accountability in the private security industry. We are currently working to pass similar legislation here in the District of Columbia.

Starting in America's larger cities, SEIU has been working with responsible security companies and their clients in the commercial real estate industry, city officials, and public safety experts in an effort to create partnerships between labor, management and government that can address the industry's twin problems of poor training and high staff turnover. Where SEIU, the industry, and its clients are already working together, real improvements are being made that are stabilizing and professionalizing the workforce.

Nearly every major US private security firm including industry leaders Securitas, Guardsmark, and Cognisa are responding to the call for improved private security standards and are working cooperatively with SEIU to improve standards in key US cities.

For example, in June 2004, SEIU - along with the New York Police Department, Mayor Michael Bloomberg, and the Real Estate Board of New York - launched "New York Safe & Secure," a program to provide comprehensive training to security officers in Manhattan commercial office buildings. The program's curriculum was developed with the NYPD, FDNY, and John Jay College.

We welcome the GAO report and share concern over its evidence of problems at five Energy, Science and Environment sites in complying with the Department's new Design Basis Threat. We are especially impressed that the GAO investigators sought security officers' views as their principal data source. Their testimony provides a frank portrait of security at these facilities.

1. CONTRACTORS' FAILURE TO MEET TRAINING AND PERFORMANCE STANDARDS

We know DOE's regulations for training and performance are -- as they should be -- far beyond the standards in the commercial office world where many of our members are located. But we have had extensive experience with private contractors, both in the security and cleaning worlds and we are acutely aware of the ways in which contracts may encourage or discourage responsible practices. We know that the best standards in the world are weakened if clients -- in this case the Department of Energy -- do not provide sufficient oversight of their contractors. The GAO report, read in conjunction with other recent reports from the Department's Inspector General's office, give ample cause for concern about the Department's exercise of its oversight role to ensure contractors adhere to the regulations.

The GAO report deals with a number of large-scale matters such as the physical redesign of DOE/ESE sites; the development of new technologies to enhance site security; consolidation of special nuclear material. However we are struck by what at first glance might be construed as the more "prosaic" findings: that officers believe they receive inadequate firearms and tactical training; undependable radio communications (including inadequate batteries); undependable vehicles, some with door handles that do not work which make entering and exiting difficult.

2. WHAT ARE THE IMPLICATIONS OF FAILURE?

Though seemingly mundane, poor communication equipment may in fact contribute to serious problems. We note here the media reports describing problems during a drill at NNSA's Y-12 plant in September, 2004. *The New York Times* reported that guards carrying loaded submachine guns were dispatched to intercept a group of men whom they believed were intruders, but who turned out to be a second team of guards conducting a mock attack with laser-tag equipment. An official from the contractor, the foreign-owned Wackenhut Corporation, said that "communications that night could have been 'crisper.'" Two guards who spoke to the Times, "heard the dispatcher say 'armed suspects' over the radio link, but according to Wackenhut and Energy Department managers, the dispatcher said, 'I have people in the area.'"¹

Even the most conscientious and hard-working officers cannot overcome problems with training and equipment, which contribute to poor overall security performance and to low morale. There will be very little room for error when the terrorists come, and failure means putting at risk some of the most dangerous material in the world.

If DOE's security budget is nearly \$1.5 billion, to what extent is it compromised by poor radios and dead batteries?² The solution for problems at this scale is connected to issues we wish to stress, but which are not addressed in the GAO's report: oversight and accountability of contractors' behavior.

3. POOR OVERSIGHT AND ACCOUNTABILITY: INCENTIVES FOR POOR PERFORMANCE

SEIU is not opposed to the use of private security contractors. We believe security should be of the highest standard, whether performed by public authorities or private companies. However, contractors' interest in the bottom line may encourage cheating and cutting corners, unless they are subjected to rigorous oversight. While it is true that these problems exist for public authorities as well, we believe the pressures are considerably greater in the private sphere. In response government must create checks and balances to change the structure of incentives that encourage cheating and cutting corners. We believe, however, that the Department's use of award fees contributes to rather than checks these irresponsible outcomes.

The GAO has consistently warned DOE about problems with respect to award fees, and these problems continue to plague the department.³ There were a number of high-profile security lapses at the Oak Ridge Complex in the last two years. The most significant was revealed in the Inspector General's report on cheating during security drills.

DOE Investigators found credible evidence that the contractor had committed or tolerated a range of abuses.⁴ These included:

- Management told security officers in advance the building and target to be attacked, the exact number of adversaries, and the location where a diversion would occur. This information was reportedly provided about three weeks before the exercise occurred, which allowed the protective force to formulate special plans on how to counter the adversary.
- A protective force responder would be assigned to “tail” the aggressors and observe their movements while they were touring Y-12 buildings and targets prior to and in preparation for an exercise.
- Based on specific attack information, trucks or other obstacles would be staged at advantageous points to be used as barricades and concealment by protective force responders for shooting during the exercises.
- Training prior to a performance test would focus on the specific building to be targeted, and in some instances, an oral plan would be created that deviated from the established Y-12 tactical plan to counter the attack.
- Protective force members had tampered with the Multiple Integrated Laser Engagement System (MILES) gear used to determine whether the officer wearing it could no longer participate in the exercise after receiving a simulated fatal gunshot. Participants had removed the batteries from the MILES gear; put the batteries in backwards and/or placed material such as tape, mud, or Vaseline over the system sensors, so they would not operate properly. New MILES gear purchased at Oak Ridge in 2000, which could have minimized such tampering, was not fully implemented.
- Management would identify the best prepared protective force personnel and then substitute them for lesser prepared personnel who were scheduled to participate in an exercise.
- Officers who would normally relieve other protective force personnel would be armed and held in “stand-by” to participate in an exercise, potentially adding six or seven additional armed responders that would not normally have been available during a shift.

Yet, while the incident cost the contractor about \$200,000 in fees, the company still received a “good” performance grade from DOE, an overall score of 93 out of 100 and a \$2.3 million fee for the six-month period during which the cheating incident occurred.⁵

The GAO report strongly endorses the importance of force-on-force tests, but their value is eliminated if contractors are able to cheat and provide inadequate training. Rather than a multi-million dollar award, one might have thought that such outrageous practices demanded serious sanctions from DOE, including cancellation of the contract, suspension or debarment. Without serious penalties, the public has every right to ask whether the Department is applying the practice of “social promotion” to oversight of its nuclear facilities.

The range of these practices at Y-12 raises an obvious question as to whether the same contractor behaves similarly elsewhere. Security officers have told us that at least some of these practices are not confined to Y-12. We have heard from multiple security

employees (current and former) at another DOE/ESE, for example, that workers have a common motto when referring to force-on-force tests: “If you ain’t cheating, you ain’t competing.”

Training Cutbacks

The GAO report calls into question the realism of training, a serious problem that was extensively reviewed by the Inspector General last year. The IG reported that various DOE sites “had eliminated or modified significant portions of the training while others were not using realistic training delivery methods.” According to the IG, sites that use unrealistic training methods did not meet departmental requirements because the skills acquired by the officers cannot be adequately measured. Moreover, use of anything less than realistic training techniques, “may rob the trainee of the exposure to the levels of force, panic, and confusion that are usually present during an actual attack.” Such deviations increase the possibility that the protective force “will not be able to safely respond to security incidents or will use excessive levels of force.”

The sites included all of the facilities reviewed in the current GAO report.⁶

But the Inspector General indicated that concerns for security officers’ health and safety was not the only factor motivating the contractors’ training cutbacks. In some of these cases, Department and contractor security officials indicated that site management was concerned because there was a correlation between the number of injuries incurred at a site and the contractor’s performance evaluation rating and subsequent fee determination.

According to an assessment conducted by SEIU, the contractor at the Savannah River site and the Oak Ridge complex had a poor health and safety record at these facilities in 2004, and one might reasonably expect that they had an extra incentive to keep these incidents down.

It is unclear how much the Inspector General’s training review has changed practices on the ground, the incentives that encourage such contractor behavior, or how much discipline the department has been able to exert over contractors’ short cuts. Last month the Inspector General reported that the security contractor at the Oak Ridge Reservation shorted the protective force on combat readiness refresher training by about 40% on average, reporting “planned” rather than actual training time. The report found that some officers signed attendance rosters for on-the-job refresher training without receiving the training.⁷

The IG also found that Wackenhut officers routinely worked in excess of the 60 hr/week maximum in direct violation of the DOE Protective Force Program Manual. Excessive overtime is itself a form of cost cutting at the expense of security.

We wonder – and believe the Inspector General should investigate - whether these practices are confined to Oak Ridge or are company-wide policies.

Contempt for Oversight Agencies and Congress

This Committee's work depends heavily on the investigations provided by independent agencies, including the Department's Inspector General. Yet for its efforts, the Office of the Inspector General has been subject to continuous public criticism by contractors.

In response to the recent Inspector General report on training problems at the Oak Ridge complex, Jean Burleson, spokesman for foreign-owned Wackenhut mocked the Inspector General as "'bean counters' who didn't understand security practices."⁸ In an earlier response to the same report, Burleson was claimed that each of the Inspector General's report on Oak Ridge security in the past couple of years was "fraught with problems."⁹

This manager has a history of public criticism for the IG. In response to last year's report on cheating during security drills, he described details in the inspector general's report as "old news," which he said "may or may not have occurred." He claimed "There is no impropriety right now going on. Security is better today than it has ever been."¹⁰ And in response to the IG's report on training cutbacks across the DOE complex, he said, "Yeah, we had some issues. But make no mistake about it. If you attack us, we are still capable of kicking your a—."¹¹

It should be noted that many of these comments came after a this same spokesperson was called to testify before a closed-door Energy & Commerce Committee hearing in January 2004.¹²

Such comments indicate to us a deep-seated contempt for the agencies – including Congress – charged with oversight of these sensitive facilities. These unfortunate comments create an impression completely at odds with oversight and accountability: that companies operate with impunity, and believe they can get away with anything if they have no fear about publicly mocking and denigrating the Inspector General. Moreover, their self-interested claims that facilities are safe may create complacency among the public, or – worse – feed a perception that oversight isn't taken seriously by the Department.

4. FOLLOWING THE CONTRACTORS

To us the conditions described by the GAO report are shocking, but not surprising, since we have encountered very similar problems in other contexts, including NNSA sites, the commercial nuclear power industry and even in sensitive sites such as U.S. military bases. However, the subject matter of the report – and today's hearing – follows the organizational lines of the Department of Energy. This committee has also conducted investigations of, respectively, NNSA sites and commercial nuclear power plants.

While these separate focuses are valuable, they also point to the pressing need for examining security horizontally across such sensitive facilities. From our experience there is a species of problems which is not a product of the specific circumstances of

these different DOE settings, but is instead bound up with the practices of private security companies themselves and the incentives built into their contracts. We have highlighted the incentives for bad behavior arising from inadequate oversight and accountability. While there is certainly value in assessing security within DOE/ESE alone, this choice highlights the additional need to focus on security in a wholistic manner – to follow the contractors across the range of sensitive sites.

Such an approach would be particularly appropriate during procurement, to compel the Department to assess a security contractor's entire record, both in the public and private sectors. While such an approach is required in the Federal Acquisition Regulations, we are concerned that it is not standard procedure in the Department, based on our tracking of last year's award of the INEEL security contract. In February, 2004 Alutiiq – an Alaska Native Corporation with no prior nuclear security experience – was awarded an estimated \$200 million sole-source contract for security at INEEL, and was expected to subcontract work to Wackenhut. In this instance, oversight was thankfully provided by the Idaho congressional delegation, which publicly criticized DOE and met with the Secretary of Energy to discuss security at the Lab. In April 2004, DOE quietly announced that INEEL security would not be outsourced after all, effectively reversing the award.¹³

Tracking a company's performance across its scope of operations could uncover patterns that may give cause for concern. An assessment of the security contractor at the Savannah River site, for example, would uncover that the same contractor has been caught cheating by the IG on a security drill; had a poor health and safety record across DOE sites in 2004; cutback on training; performed poorly on a force-on-force test at the Nevada Test Site; was involved in a near-friendlly fire incident; systematically violated weapons inventory and handling policies; shorted employees on training at one facility by 40% on average, reporting "planned" rather than actual training time to the DOE; required employees to work excessive overtime. By widening the scope further to include nuclear power facilities, one would find that the same contractor has been caught retaliating against whistleblowers in commercial nuclear power plants.

The point is that it is the contractor that has boots on the ground; it is the contractor that stands between the Category 1 special nuclear material and the terrorists. Therefore the contractor's record should be under scrutiny.

5. RECOMMENDATIONS

We believe security should be of the highest quality, whether performed by public authorities or private contractors. When using private security contractors, it is necessary to ensure that proper checks and balances are in place to protect against cheating and cutting corners. The DOE nuclear facilities that have substantial quantities of Category I special nuclear material – in both NNSA and ESE – should be the gold standard for the entire security industry.

Such monitoring should begin during the contracting process to ensure that bidders' complete records – both in their private sector and public work – will be subject to scrutiny.

We recommend:

- **That DOE urgently implements an effective process to monitor performance and weed out poor performers, rather than reward them.**
- **That DOE acquisition processes be strengthened to ensure contracting officers do proper due diligence by assessing security contractors' past performance and record of business integrity and ethics.**
- **A review of award fees, and urge the more robust use of penalties as a stick to enforce compliance. The DOE must have a dramatically lower tolerance for cheating and cutting corners, and must make it too expensive for a contractor to risk such behavior.**

NOTES

¹ “Security Drill at Weapons Plant Raises Safety Questions,” *The New York Times*, December 21, 2004. The two security guards told *The Times* that they had been threatened with firing if they spoke with outsiders about the incident.

² Problems with radios are not limited to the contractor’s performance at Y-12; SEIU will soon be releasing a report on security at US Army installations, and guards report that the same contractor is responsible for inadequate provision of radios and batteries at multiple Army bases.

³ Nearly ten years ago the GAO warned that DOE “contract managers seemed reluctant to use the penalties and sometimes used the financial rewards inappropriately. In some cases, DOE rewarded contractors with award fees, or bonuses, even though their performance was poor.” “Department of Energy: Opportunity to Improve Management of Major System Acquisitions,” General Accounting Office, November, 1996 (GAO/RCED-97-17), p. 39. In 1999 the GAO reported that DOE could not show how the higher fees it was paying to contractors under performance-based contracting were of value to the government and to the taxpayers. “National Laboratories: DOE Needs to Assess the Impact of Using Performance-Based Contracts,” May, 1999, GAO/RCED-99-141, p. 8. As recently as last April, the GAO reported to the Government Reform Committee that many of the problems concerning award fees persist. It recommended that “to ensure the department gets what it pays for,” DOE must review how it administers contracts and correct previously identified weaknesses, such as overreliance on contractor data and providing training to its contracting officers.” “Department of Energy: Further Actions Are Needed to Strengthen Contract Management for Major Projects,” Government Accountability Office, April 19, 2005 (GAO-05-123), p. 39.

⁴ United States Department of Energy, Office of Inspector General, Office of Inspections and Special Inquires, “Protective Force Performance Test Improperities,” DOE/IG-0636, January 2004.

⁵ “Critics say security still an issue at nuclear weapons plant,” *Associated Press*, August 16, 2004.

⁶ “The Department’s Basic Protective Force Training Program,” U.S. Department of Energy, Office of Inspector General, Office of Inspections and Special Inquiries, Inspection Report (DOE/IG-0641) March, 2004.

⁷ “Protective Force Training at the Department of Energy’s Oak Ridge Reservation,” U.S. Department of Energy, Office of Inspector General, Office of Inspections and Special Inquiries, Inspection Report (DOE/IG-0694) June, 2005.

⁸ “Y-12 safe, official says; Federal manager at plant disputes recent critical security reports,” *Knoxville News-Sentinel*, July 4, 2005.

⁹ “Feds assail OR guard overtime; Wackenhut disputes findings by DOE inspector general,” *Knoxville News-Sentinel*, June 29, 2005.

¹⁰ “U.S. says guards at nuclear weapons plant cheated in terrorist exercise,” *Associated Press*, January 26, 2004.

¹¹ “Critics say security still an issue at nuclear weapons plant,” *Associated Press*, August 12, 2004.

¹² *Associated Press*, August 12, 2004.

¹³ “Craig, Crapo, and Simpson React to DOE Contract Announcement; Abandonment of earlier competitive principles and lack of consultation causes concern,” News Release, United States Senator Larry Craig, February 23, 2004. Wackenhut Services, Inc. is a wholly owned subsidiary of the Wackenhut Corporation through which the company administers its sensitive federal contracts. It was estimated that the contract was worth at least \$40 million per year for up to five years.